SUPERIOR COURT
YT ALL CHARTS ARIZENA 1 Larry A. Hammond, 004049 Anne M. Chapman, 025965 2009 JUN 10 PM 2: 31 2 OSBORN MALEDON, P.A. 2929 N. Central Avenue, 21st Floor 3 N. Segun. Phoenix, Arizona 85012-2793 4 (602) 640-9000 lhammond@omlaw.com 5 achapman@omlaw.com 6 John M. Sears, 005617 107 North Cortez Street 7 Suite 104 Prescott, Arizona 86301 8 (928) 778-5208 9 John.Sears@azbar.org Attorneys for Defendant 10 11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 12 IN AND FOR THE COUNTY OF YAVAPAI 13 STATE OF ARIZONA. No. CR 2008-1339 14 Plaintiff, Div. 6 15 DEFENDANT'S RESPONSE TO VS. 16 STATE'S MOTION TO COMPEL STEVEN CARROLL DEMOCKER, AMAZON.COM TO PRODUCE 17 DEFENDANT'S PURCHASE Defendant. HISTORY FOR IN CAMERA 18 INSPECTION AND ORDER 19 (Oral Argument Requested) 20 Defendant Steven C. DeMocker, by and through counsel, hereby responds to the 21 State's Motion to Compel Amazon.com to produce Defendant's purchase history for an 22 in camera inspection and order and requests that the Court deny the State's motion or, 23 in the alternative, permit an ex parte inspection by Mr. DeMocker's counsel and permit 24 counsel to be heard prior to ordering the disclosure of any Amazon.com records. 25 **BACKGROUND** 26 On May 29, 2009 the State submitted a Motion to Compel Amazon.com to 27

produce Defendant's purchase history for an in camera inspection "to determine if any

28

of Defendant's past purchases are relevant to the case at bar." Amazon.com did not appear on the Notice of Service. The State noted that Amazon.com had objected to the subpoena on the grounds of Mr. DeMocker's First Amendment rights but the State's motion did not attach either the subpoena or any objection or other response from Amazon.com. On June 1, 2009, without hearing from Amazon.com or Mr. DeMocker, the Court granted the State's motion and ordered Amazon.com to produce Defendant's purchase history records for an *in camera* inspection.

ARGUMENT

As an initial matter, counsel notes the procedural irregularity of the State moving to compel documents from Amazon.com without providing them with notice of the motion. There is no indication that Amazon.com received notice of the State's filing or of this Court's order for an *in camera* inspection. While the State's motion suggests that Amazon.com objected to production to protect Mr. DeMocker's privacy and other First Amendment rights, counsel for Mr. DeMocker has not been provided with Amazon.com's objections.

Mr. DeMocker has a cognizable First Amendment right to maintain the privacy of his reading choices. *See e.g. In re Grand Jury Subpoena to Amazon.com*, 246 F.R.D. 570 (W.D. Wis. 2007) (on First Amendment grounds, the court did not require Amazon to disclose the identities of customers who purchased used books from the grand jury's target, a used bookseller under investigation for tax evasion and wire fraud). Amazon.com's Privacy Notice provides that Amazon will only disclose information when it is appropriate to comply with the law.² Furthermore, the Arizona Constitution

¹ Attached at Exhibit A hereto are documents Bates numbered 001484-1495, which are the records disclosed by the State thus far relating to Amazon.com. These documents include a request to Amazon.com for information on a specific book order and a request for the IP address used to make the purchase. Amazon.com's response to Detective Doug Brown on August 28, 2008 is included and provides the order information and IP address as requested. No subpoena is included in these documents, nor is any response from Amazon.com objecting to compliance.

² Attached as Exhibit B.

provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Ariz. Const. Art.2, § 8. Mr. DeMocker has a protectible privacy interest in his ordering history with Amazon.com.

The State cites no authority to support its subpoena for these documents nor has it demonstrated how Mr. DeMocker's ordering history is relevant. The State has already seized books Mr. DeMocker ordered from Amazon and Amazon.com has already provided the order history for those books and the IP address from where those books were purchased. The State has articulated no reason to believe that Mr. DeMocker ordered any additional books from Amazon.com or any reason why Mr. DeMocker's book order history is relevant.

CONCLUSION

For these reasons, and any evidence adduced at the hearing on this matter, Mr. DeMocker requests that this Court deny the State's motion or, in that alternative, that his counsel be permitted to perform an *ex parte* inspection of the Amazon.com records and be permitted to be heard before the Court issues any order compelling release of Mr. DeMocker's Amazon.com ordering history.

DATED this 10th day of June, 2009.

By:

John Sears

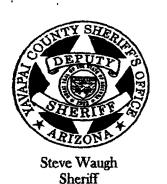
107 North Cortez Street, Suite 104 Prescott, Arizona 86301

OSBORN MALEDON, P.A. Larry A. Hammond Anne M. Chapman 2929 N. Central Avenue, Suite 2100 Phoenix, Arizona 85012-2793

Attorneys for Defendant

ORIGINAL of the foregoing filed this 10th day of June, 2009, with:

| 1 | |
|----|---|
| 2 | Jeanne Hicks, Clerk of the Court |
| 3 | Yavapai County Superior Court 120 S. Cortez |
| 4 | Prescott, AZ 86303 |
| 5 | COPIES of the foregoing hand delivered this 10 th day of June, 2009, to: |
| 6 | The Hon. Thomas B. Lindberg |
| 7 | Judge of the Superior Court Division Six |
| 8 | 120 S. Cortez Prescott, AZ 86303 |
| 9 | |
| 10 | Joseph C. Butner, Esq. Office of the Yavapai County Attorney 3505 W. Highway 260 |
| 11 | Suite 106 |
| 12 | Camp Verde, AZ 86322 |
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AGENCY - FAX TRANSMITTAL PAGE

| DATE: | 8/26/08 | | |
|---|--|--|--|
| TO: | Amazon.com, Attn: Lynn Radliff | | |
| PH# | 206-266-1000, Fax: 206-266-7010 | | |
| FROM: | Detective Doug Brown #5821 | | |
| PH# | 928-777-7334, Cell: 928-713-0638, Fax: 928-777-7343 | | |
| Attcahed is | COMMENTS: Attcahed is a copy of the request and shipping receipt that was sent on 08/23/08. Please call after receiving the information. | | |
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YAVAPAI COUNTY SHERIFFS OFFICE "Serving Since 1864"

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|-------|---|--|
| TO: | Amazon.com | |
| PH# | 206-266-1722, Fax: 206-266-1838 | |
| FROM: | Detective Doug Brown #5821 | |
| PH# | 928-777-7334, Cell: 928-713-0638, Fax: 928-777-7343 | |

COMMENTS:

Yavapai County Sheriff's Office - DR #08-029129.

We are requesting all available payment/billing information for the attached order.

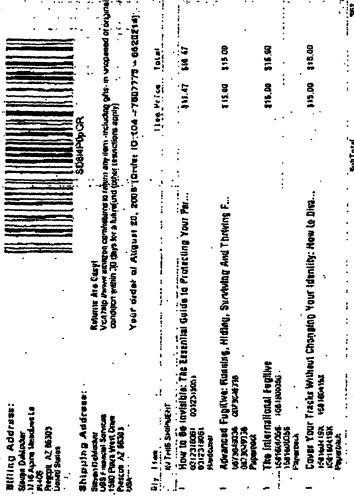
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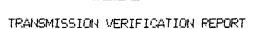
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x:2132535472

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TIME : 08/23/2008 13:57 NAME : YCSO CIB FAX : 9287777343 TEL : 9287713278 SER.# : BROC3J227220

DATE, TIME FAX NO./NAME DURATION PAGE(S) RESULT MODE

08/23 13:55 912062661838693281 00:01:30 02 OK STANDARD ECM

Close Window



Tracking Detail

Your package has been delivered.

Tracking Number:

1Z 411 E0W 02 1321 642 2

Type:

Package

Status:

Delivered

Delivered On:

08/22/2008 11:42 A.M.

Signed By:

WHEELER

Location:

FRONT DESK

Delivered To:

PRESCOTT, AZ, US

Shipped/Billed On:

08/20/2008

Service:

2ND DAY AIR

Weight:

3.00 Lbs

Package Progress

| Location | Date | Local Time | Description |
|-------------------------------|------------|------------|------------------------------|
| PRESCOTT VALLEY, AZ, US | 08/22/2008 | 11:42 A.M. | DELIVERY |
| | 08/22/2008 | 7:30 A.M. | OUT FOR DELIVERY |
| | 08/22/2008 | 1:45 A.M. | ARRIVAL SCAN |
| PHOENIX, AZ, US | 08/22/2008 | 12:16 A.M. | DEPARTURE SCAN |
| PHOENIX, AZ, US | 08/21/2008 | 7:31 P.M. | ARRIVAL SCAN |
| | 08/21/2008 | 7:01 P.M. | DEPARTURE SCAN |
| | 08/21/2008 | 4:51 P.M. | ARRIVAL SCAN |
| LOUISVILLE, KY, US | 08/21/2008 | 4:28 P.M. | DEPARTURE SCAN |
| | 08/21/2008 | 12:23 P.M. | ORIGIN SCAN |
| US | 08/20/2008 | 11:33 P.M. | BILLING INFORMATION RECEIVED |

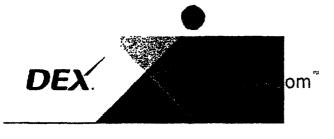
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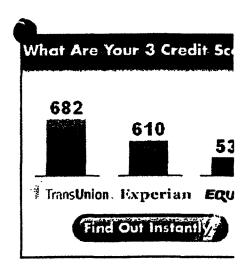
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- Aug. 26. 2008 3:41PM





amazon.com - PO Box 81226 - Seattle, WA - 98104

To:

Doug Brown, Detective

928-777-7334

928-7777343

Yavapai County Sheriff's Office

From:

Bradley Pfau

Law Enforcement Liaison

amazon.com & target.com

206-266-9626

NO. DOYZ

206-266-1838

pfaub@amazon.com

Date:

Fax:

Phone:

26-Aug-08

Your Reference #: 08-029129

Amazon.com's Reference #

08-08048

Total Pages:

Detective Brown,

Thank you for contacting Amazon.com regarding your investigation of the unauthorized use of Steven DeMocker's credit card. Included, you'l find the order details including the IP address used for the order.

Please let me know if you have any questions or if I can be of further assistance. I would appreciate an update on this case should a suspect be arrested.

As I mentioned over the phone, this order was placed on Mr. Domocker's previously standing account using our 1-click ordering method.

Best Regards,

Bradley Pfau Amazon.com, Target.com Law Enforcement Liason

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Sheriff

YAVAPAI COUNTY SHERIFF'S OFFICE "Serving Since 1864"

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| DATE: | 8/23/08 | | |
|-------|---|--|--|
| TO: | Amazon.com · | | |
| PH# | 206-266-1722, Fax: 206-266-1838 | | |
| FROM: | FROM: Detective Doug Brown #5821 | | |
| PH# | 928-777-7334, Cell: 928-713-0638, Fax: 928-777-7343 | | |

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Yavapai County Sheriff's Office - DR #08-029129.

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No. 6692 ł. 3

CONFIDENTIAL: For official law enforcement use only.

Order ID:

104-7507775-6620214

Order Date:

Wed 20-Aug-2008 14:41:34 PDT

Order Status: complete

Customer Name: Steven DeMocker

Customer Email: steven.democker@gmail.com

Order Amount: USD 80.42 IP Address: 67.60.203.55

Payment ID: 9990-0000285-806140

Payment Type: Credit Card

Payment Name: Steven DeMocker Payment Issuer: American Express

Payment Tail: 01005

Billing Address:

Steven DeMocker

1716 Alpine Meadows La

#1405

Prescott AZ 86303

United States

Voice: 928-776-8852

Shipping Address:

Steven DeMocker

UBS Financial Services

1560 Plaza West Drive

Prescott AZ 86303

USA

Voice: 928-713-1919

All Items Ordered

ASIN Price Qty Title

0312319061 16.47 1 How to Be Invisible: The Essential Guide to Protecting Your Personal Privacy, Your Assets, and Your Life (Revised Edition)

158160419X 15.00 1 Cover Your Tracks Without Changing Your Identity: How to Disappear Until You WANT to Be Found

1581600356 16.00 1 The International Fugitive

0873649338 15.00 1 Advanced Fugitive: Running, Hiding, Surviving And Thriving Forever

Shipment 1 of 1

Shipment Status: shipped

Shipment Date: Wed 20-Aug-2008 19:34:47 PDT ...

Shipment Company: UPS_2ND_COM

Shipment Tracking ID: 1Z411E0W0213216422

Shipment Total: USD 80.42

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ASIN Qty Title

0312319061 1 How to Be Invisible: The Essential Guide to Protecting Your Personal Privacy, Your Assets, and Your Life (Revised Edition)

0873649338 1 Advanced Fugitive: Running, Hiding, Surviving And Thriving Forever

1581600356 1 The International Fugitive

158160419X 1 Cover Your Tracks Without Changing Your Identity: How to Disappear Until

You WANT to Be Found

No returns for this order No refunds for this order **Updating Payment**

Information

Adding or Deleting

Addresses

Changing E-Mail

Address or Password

Updating

Subscriptions

<u>More...</u>

Amazon.com Site Features

Your Content

Advanced Shopping

Features

Your Media Library

RSS Feeds

More...

Selling at Amazon.com

Introduction to Selling

Quick Start Guide

Seller Account and

Settings

Policies and

Agreements

More...

Publisher & Vendor Guides

List and Sell Books

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On-Demand

Publishing

More...

Business Opportunities

Advantage

Amazon Payments

Associates

Web Services

Mechanical Turk

WebStore by Amazon

<u> More...</u>

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Last updated: October 1, 2008. To see what has changed, <u>click</u> <u>here</u>.

Amazon.com knows that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly. This notice describes our privacy policy. By visiting Amazon.com, you are accepting the practices described in this Privacy Notice,

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- Does Amazon.com Share the Information It Receives?

- How Secure Is Information About Me?
- What About Third-Party Advertisers and Links to Other Websites?
- Which Information Can I Access?
- What Choices Do I Have?
- Are Children Allowed to Use Amazon.com?
- Does Amazon.com Participate in the Safe Harbor Program?
- Conditions of Use, Notices, and Revisions
- Examples of Information Collected

What Personal Information About Customers Does Amazon.com Gather?

The information we learn from customers helps us personalize and continually improve your shopping experience at Amazon.com. Here are the types of information we gather,

- Information You Give Us: We receive and store any information you enter on our Web site or give us in any other way. Click here to see examples of what we collect. You can choose not to provide certain information, but then you might not be able to take advantage of many of our features. We use the information that you provide for such purposes as responding to your requests, customizing future shopping for you, improving our stores, and communicating with you.
- Automatic Information: We receive and store certain types
 of information whenever you interact with us. For example,
 like many Web sites, we use "cookies," and we obtain certain
 types of information when your Web browser accesses
 Amazon.com or advertisements and other content served by
 or on behalf of Amazon.com on other Web sites. Click here
 to see examples of the information we receive.
- E-mail Communications: To help us make e-mails more
 useful and interesting, we often receive a confirmation when
 you open e-mail from Amazon.com if your computer
 supports such capabilities. We also compare our customer
 list to lists received from other companies, in an effort to
 avoid sending unnecessary messages to our customers. If you
 do not want to receive e-mail or other mail from us, please
 adjust your <u>Customer Communication Preferences</u>.
- Information from Other Sources: We might receive information about you from other sources and add it to our account information. <u>Click here</u> to see examples of the information we receive.

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- Cookies are alphanumeric identifiers that we transfer to your computer's hard drive through your Web browser to enable our systems to recognize your browser and to provide features such as 1-Click purchasing, Recommended for You, personalized advertisements on other Web sites (e.g., Amazon Associates with content served by Amazon.com and Web sites using Checkout by Amazon payment service), and storage of items in your Shopping Cart between visits.
- The Help portion of the toolbar on most browsers will tell you how to prevent your browser from accepting new cookies, how to have the browser notify you when you receive a new cookie, or how to disable cookies altogether. Additionally, you can disable or delete similar data used by browser add-ons, such as Flash cookies, by changing the add-on's settings or visiting the Web site of its manufacturer.

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- Promotional Offers: Sometimes we send offers to selected groups of Amazon.com customers on behalf of other businesses. When we do this, we do not give that business your name and address. If you do not want to receive such offers, please adjust your <u>Customer Communication</u> Preferences.
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Privacy Notice.

With Your Consent: Other than as set out above, you will
receive notice when information about you might go to third
parties, and you will have an opportunity to choose not to
share the information.

How Secure Is Information About Me?

- We work to protect the security of your information during transmission by using Secure Sockets Layer (SSL) software, which encrypts information you input.
- We reveal only the last four digits of your credit card numbers when confirming an order. Of course, we transmit the entire credit card number to the appropriate credit card company during order processing.
- It is important for you to protect against unauthorized access to your password and to your computer. Be sure to sign off when finished using a shared computer. <u>Click here</u> for more information on how to sign off.

What About Third-Party Advertisers and Links to Other Websites?

Our site includes third-party advertising and links to other Web sites. We do not provide any personally identifiable customer information to these advertisers or third-party Web sites. Click here for more information about our Advertising Policies and Specifications.

These third-party Web sites and advertisers, or Internet advertising companies working on their behalf, sometimes use technology to send (or "serve") the advertisements that appear on our Web site directly to your browser. They automatically receive your IP address when this happens. They may also use cookies, JavaScript, web beacons (also known as action tags or single-pixel gifs), and other technologies to measure the effectiveness of their ads and to personalize advertising content. We do not have access to or control over cookies or other features that they may use, and the information practices of these advertisers and third-party Web sites are not covered by this Privacy Notice. Please contact them directly for more information about their privacy practices. In addition, the Network Advertising Initiative offers useful information about Internet advertising companies (also called "ad networks" or "network advertisers"), including information about how to opt-out of their information collection.

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Which Information Can I Access?

Amazon.com gives you access to a broad range of information

about your account and your interactions with Amazon.com for the limited purpose of viewing and, in certain cases, updating that information. <u>Click here</u> to see some examples, the list of which will change as our Web site evolves.

What Choices Do I Have?

- As discussed above, you can always choose not to provide information, even though it might be needed to make a purchase or to take advantage of such Amazon.com features as Your Profile, Wish Lists, Customer Reviews, and Amazon Prime.
- You can add or update certain information on pages such as those referenced in the "Which Information Can I Access?" section. When you update information, we usually keep a copy of the prior version for our records.
- If you do not want to receive e-mail or other mail from us, please adjust your <u>Customer Communication Preferences</u>. (If you do not want to receive <u>Conditions of Use</u> and other legal notices from us, such as this Privacy Notice, those notices will still govern your use of Amazon.com, and it is your responsibility to review them for changes.)
- If you do not want us to use personal information that we gather to allow third parties to personalize advertisements we display to you, please adjust your <u>Advertising Preferences</u>.
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- Help department
- Most Recent Purchases
- Your Profile and Community Guidelines

Examples of Information Collected

Information You Give Us

You provide most such information when you search, buy, bid, post, participate in a contest or questionnaire, or communicate with customer service. For example, you provide information when you search for a product; place an order through Amazon.com or one of our third-party sellers; provide information in Your Account (and you might have more than one if you have used more than one email address when shopping with us) or Your Profile; communicate with us by phone, e-mail, or otherwise; complete a questionnaire or a contest entry form; compile Wish Lists or other gift registries; provide employer information when opening a corporate account; participate in Discussion Boards or other community features; provide and rate Reviews; specify a Special Occasion Reminder; share information with Amazon Friends; and employ other Personal Notification Services, such as Available to Order Notifications. As a result of those actions, you might supply us with such information as your name, address, and phone numbers; credit card information; people to whom purchases have been shipped, including addresses and phone number; people (with addresses and phone numbers) listed in 1-Click settings; e-mail addresses of Amazon Friends and other people; content of reviews and e-mails to us; personal description and photograph in Your Profile; and financial information, including Social Security and driver's license numbers.

Automatic Information

Examples of the information we collect and analyze include the Internet protocol (IP) address used to connect your computer to the Internet; login; e-mail address; password; computer and connection information such as browser type, version, and time zone setting, browser plug-in types and versions, operating system, and platform; purchase history, which we sometimes aggregate with similar information from other customers to create features such as Purchase Circles and Top Sellers; the full Uniform Resource Locator (URL) clickstream to, through, and from our Web site, including date and time; cookie number; products you viewed or searched for; and the phone number you used to call our 800

number. We may also use browser data such as cookies, Flash cookies (also known as Flash Local Shared Objects), or similar data on certain parts of our Web site for fraud prevention and other purposes. During some visits we may use software tools such as JavaScript to measure and collect session information, including page response times, download errors, length of visits to certain pages, page interaction information (such as scrolling, clicks, and mouse-overs), and methods used to browse away from the page.

Information from Other Sources

Examples of information we receive from other sources include updated delivery and address information from our carriers or other third parties, which we use to correct our records and deliver your next purchase or communication more easily; account information, purchase or redemption information, and page-view information from some merchants with which we operate co-branded businesses or for which we provide technical, fulfillment, advertising, or other services (such as Target.com); search term and search result information from some searches conducted through the Web search features offered by our subsidiaries, Alexa Internet and A9.com; search results and links, including paid listings (such as Sponsored Links); and credit history information from credit bureaus, which we use to help prevent and detect fraud and to offer certain credit or financial services to some customers.

Co-branded and Joint Offerings

Examples of businesses with which we offer joint or co-branded products and other offerings include Target, CD Now, Verizon Wireless, Sprint, T-Mobile, AT&T, Shutterfly, J&R, Godiva, Avon, Macy's, PacSun, Eddie Bauer and Northern Tool + Equipment.

Information You Can Access

Examples of information you can access easily at Amazon.com include up-to-date information regarding recent orders; personally identifiable information (including name, e-mail, password, communications and personalized advertising preferences, address book, and 1-Click settings); payment settings (including credit card information and gift certificate, gift card, and check balances); email notification settings (including Alerts, Available to Order notifications, Delivers, Recommended for You, Special Occasion Reminders, Weekly Movie Showtimes, and newsletters); recommendations (including recent product view history, prior order history, and Favorites); shopping lists and gift registries (including Wish Lists and Baby and Wedding Registries); Marketplace seller accounts; and Your Profile (including your product Reviews, Requests, and Recommendations, Listmania lists, "So You'd Like to..." guides, personal profile, people you tagged as interesting, and Amazon Friends).

Self-Service Tools

Most Popular

Track or Manage

Purchases

Manage Payment

Options

Return Items

Change Name, Email, or Password Manage Address Book

- Account Profile
- Billing & Addresses
- TOrdering Settings
- + Lists
- + Your Content

Sign Out of

Amazon.com

Get Express customer service or contact us by email or phone.



Digital Downloads Help





amazon video



amazonkindle



Did This Info Help?

Yes, I found the information I needed

No, I wasn't able to find the information I needed

Where's My Stuff?

- Track your recent orders.
- View or change your orders in Your Account.

Shipping & Returns

- See our shipping rates & policies.
- See <u>FREE shipping</u> information.
- Return an item (here's our Returns Policy).

Need Help?

- Forgot your password?
- Buy gift cards.
- Visit our Help department,

amazon.com*

Amazon.com Home | Directory of All Stores

International Sites: Canada | United Kingdom | Germany | Japan | France | China

Business Programs: Sell on Amazon | Build an eCommerce Site | Advertise With Us | Developer Services | Self-Publish with Us

Help | View Cart | Your Account | 1-Click Settings

<u>Investor Relations</u> | <u>Press Releases</u> | <u>Careers at Amazon</u> | <u>Join Associates</u> | <u>Join Advantage</u> <u>Conditions of Use</u> | <u>Privacy Notice</u> © 1996-2009, Amazon.com, Inc. or its affiliates